Ganasan a/l Marimuthu v Public Services Commission & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-01-128 OF 1995
NH CHAN, AHMAD FAIRUZ AND MOKHTAR SIDIN JJCA
15 SEPTEMBER 1998

Public Servants *— Dismissal — Natural justice — Appellant dismissed as public servant — Failure to present a case of substance that exculpated appellant — Committee of inquiry not appointed — Whether there was a breach of natural justice — Whether appellant should have been allowed legal representation*

The appellant joined the Telekoms department as a junior technician. He was later promoted to technician and was employed by the Government of Malaysia in the general public service of the federation. The plaintiff was served with a letter informing him of two grounds on which it was proposed to dismiss him from the public service and giving him 20 days from the receipt of the letter to state in writing a representation containing grounds upon which he relies to exculpate himself. The plaintiff replied by his letter dated 21 August 1986 in which he denied both charges. However, he failed to present a case of substance to the deciding body which could have exculpated him or which would be enough for the disciplinary authority to call for further clarification and appoint a committee of inquiry in the case against him. The appellant alleged that the first respondent had acted in breach of natural justice in the dismissal of the appellant. At the trial, the appellant contended that the decision to dismiss him was null and void and of no effect on the ground that he had requested and had been denied legal representation in relation to the charges against him. The judge below dismissed his action, and he appealed. As a member of the public service, general order 23 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 was applicable to him. This provision requires that before he can be dismissed, he must be given an opportunity of being heard.

Held, dismissing the appeal:

The requirements of fairness had been satisfied by the opportunity to make written representations to the deciding body. A fair hearing does not mean that there must be an opportunity to be heard orally by the officer in person or by his lawyer at the disciplinary authority stage. It is only at the committee of inquiry stage that an oral hearing, and with it the desirability or otherwise of legal representation, can be considered.

If the disciplinary authority considers that the case against the accused officer requires further clarification, it may appoint a committee of inquiry. It is only if a committee of inquiry is appointed that he will have the opportunity of giving oral evidence to exculpate himself and the committee will have the discretion to permit him to

be represented by an officer of the public service or, in exceptional cases, by a lawyer. The proceedings in this case stopped at the stage where no provision was made for an oral hearing or for the officer or the appellant's agent or lawyer to appear before the deciding body if the appellant failed to make representations in writing or the representations he made in writing did not exculpate him. The disciplinary authority here did not require further clarification in the case against the appellant and the matter ended for the appellant by his dismissal (see pp 290D-E and 291B–E); *Doresamy v Public Services Commission* [1971] 2 MLJ 127 distinguished.

[**Bahasa Malaysia summary**

Perayu mula bekerja dengan Jabatan Telekom sebagai seorang juruteknik rendah. Ia kemudiannya dinaikkan pangkat kepada juruteknik dan digaji oleh Kerajaan Malaysia dalam bahagian perkhidmatan awam persekutuan. Plaintif telah disampaikan dengan sepucuk surat yang memaklumkan dua alasan yang mencadangkan supaya ia diberhentikan daripada perkhidmatan awam dan memberikannya tempoh 20 hari dari tarikh penerimaan surat tersebut untuk menyatakan representasi secara bertulis yang mengandungi alasan pada mana ia bergantung untuk membebaskan dirinya. Plaintif membalas menerusi suratnya bertarikh 21 Ogos 1986 dalam mana ia telah menafikan kedua-dua pertuduhan. Namun demikian, ia gagal mengemukakan kes yang kukuh kepada badan yang membuat keputusan yang mungkin boleh membebaskannya atau yang mungkin mencukupi bagi pihak berkuasa tatatertib meminta penjelasan lanjut dan melantik jawatankuasa siasatan dalam kes terhadapnya. Perayu mengatakan bahawa penentang pertama telah bertindak bertentangan dengan keadilan asasi dalam pemecatan perayu. Di perbicaraan, perayu menghujahkan bahawa keputusan untuk memecatnya adalah tak sah dan batal dan tidak berkesan atas alasan bahawa beliau telah meminta perwakilan undang-undang tetapi telah ditolak berkenaan dengan pertuduhan-pertuduhan terhadapnya. Hakim di bawah menolak tindakannya, dan ia membuat rayuan. Sebagai seorang ahli perkhidmatan awam, perintah am 23 Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D) 1980 adalah terpakai terhadapnya. Peruntukan ini menghendaki bahawa sebelum beliau boleh dipecat, beliau mestilah diberikan peluang untuk didengar.

Diputuskan, menolak rayuan:

Keperluan keadilan telah dipenuhi melalui peluang untuk membuat representasi bertulis kepada badan yang membuat keputusan. Pembicaraan yang adil tidak bermakna bahawa mestilah terdapat peluang untuk didengar secara lisan oleh pegawai sendiri atau oleh peguamnya di tahap pihak berkuasa tatatertib. Hanyalah pada tahap jawatankuasa siasatan pembicaraan lisan dan dengannya kebaikan perwakilan undang-undang atau sebaliknya bolehlah diambil kira.

Sekiranya pihak berkuasa tatatertib menganggap bahawa kes terhadap pegawai yang dituduh menghendaki penjelasan lanjut, ia boleh melantik sebuah jawatankuasa siasatan. Hanyalah jika jawatankuasa siasatan dilantik barulah ia berpeluang memberikan keterangan lisan untuk membebaskan dirinya dan jawatankuasa tersebut mempunyai budi bicara untuk membenarkannya diwakili oleh seorang pegawai dalam perkhidmatan awam atau, dalam kes-kes luar biasa, oleh seorang peguam. Prosiding-prosiding dalam kes ini telah berhenti di peringkat di mana tiada peruntukan dibuat untuk pembicaraan lisan atau untuk pegawai atau ejen atau peguam perayu untuk melaporkan diri di hadapan badan yang membuat keputusan sekiranya perayu gagal membuat representasi bertulis atau representasi bertulis yang dibuatnya tidak membebaskannya. Pihak berkuasa tatatertib di sini tidak memerlukan penjelasan lanjut dalam kes terhadap perayu dan hal ini berakhir untuk perayu menerusi pemecatannya (lihat ms 290D-E dan 291B–E); *Doresamy v Public Services Commission* [1971] 2 MLJ 127 dibeza.]

Notes

For cases on natural justice in dismissal of public servants, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1551–1552.

Cases referred to

Doresamy v Public Services Commission [1971] 2 MLJ 127 (distd)
Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 MLJ 114 (refd)
Hjh Halimatussaadiah bte Hj Kamaruddin v Public Services Commission, Malaysia & Anor [1994] 3 MLJ 61 (refd)
Local Government Board v Arlidge [1915] AC 120 (refd)
Najar Singh v Government of Malaysia & Anor [1976] 1 MLJ 203 (refd)

Legislation referred to

Federal Constitution arts 132 (1)(c), 135(2)
Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 general orders 23, 26
Public Officers (Conduct and Discipline) (General Orders Chapter D) Regulations 1969 reg 30

Appeal from: Civil Suit No S7–31–1369 of 1988 (High Court, Kuala Lumpur)

Karpal Singh (*Karpal Singh & Co*) for the appellant.
Al-Baishah bte Hj Abdul Manan (Senior Federal Counsel) for the respondent.

NH Chan JCA (delivering judgment of the court): The plaintiff (appellant) joined the Telekoms department as a junior technician in 1964. In 1978,

A he was promoted to technician (special grade). At the material time, he was employed by the Government of Malaysia (the second defendant) in the general public service of the federation as defined in art 132(1)(c) of the Federal Constitution. As a member of the public service, general order 23 (of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980) which follows art 135(2) of the constitution was B applicable to him. These provisions (ie general order 23 and art 135(2)) require that before he can be dismissed, he must be given an opportunity of being heard.

The relevant part of his statement of claim reads:

C 5 On 16 July 1986, the first defendant issued, or caused to be issued, a written notice to the plaintiff, under order 26 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980, hereinafter referred to as the general orders, and requesting the plaintiff to show cause why he should not be dismissed for committing three offences on the charge enumerated therein.

D 6 ...

7 By letter dated 24 November 1986, the first defendant wrongfully and in breach of the various provisions of the Federal Constitution, the general orders and the rule of natural justice, terminated the said employment and wrongfully dismissed the plaintiff therefrom and refused to employ him any longer.

E And he claims a declaration that his dismissal from government service was invalid and void.

As stated in para 5 of the statement of claim, the plaintiff was served with the letter (which was dated 16 July 1986) informing him of the two grounds (actually, these were the only two grounds, not three as stated in F the statement of claim) on which it was proposed to dismiss him from the public service and giving him 20 days from the receipt of the letter to state in writing a representation containing grounds upon which he relies to exculpate himself. The two grounds of complaint read:

G Pertuduhan pertama:

Bahawa tuan, Ganasan a/l Marimuthu yang bertugas sebagai juruteknik (Telekom), Tingkatan Kanan, Pejabat Telekom Tempatan Wilayah Timur I, Ibu Sawat Telekom, Bintang, Kuala Lumpur, pada 19 Februari 1985, dengan bantuan En Windsor Lawrence Hewa yang bertugas sebagai pekerja IMG kumpulan III jenis F, telah membuat panggilan telefon ke Madras, H India, nombor MAD 9144 25688 melalui meja ujian di Ibu Sawat Telekom, Bintang, Kuala Lumpur dan mengenakan/memasukkan bayaran sejumlah RM26.25 tersebut ke bil telefon nombor 484975 kepunyaan Wah Leong Sdn Bhd, Batu 31/4, Jalan Sungai Besi, Kuala Lumpur. Dengan perbuatan tuan itu, tuan telah melakukan satu kesalahan yang bertentangan dengan perintah am 4(2)(a), 4(2)(d), 4(2)(f) dan 4(2)(g) Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D) 1980.

I Pertuduhan kedua:

Bahawa tuan, Ganasan a/l Marimuthu yang bertugas sebagai juruteknik (Telekom), Tingkatan Kanan, Pejabat Telekom Tempatan Wilayah Timur I, Ibu Sawat Telekom, Bintang, Kuala Lumpur, pada 25 Mac 1985, dengan

bantuan En Windsor Lawrence Hewa yang bertugas sebagai pekerja IMG kumpulan III jenis F, telah membuat dua (2) panggilan telefon ke Madras, India, nombor MAD 9144 25688 melalui meja ujian di Ibu Sawat Telekom, Bintang, Kuala Lumpur dan mengenakan/memasukkan bayaran sejumlah RM5.25 dan RM23.25 tersebut ke bil telefon nombor 422737 kepunyaan CP Ng & Co Sdn Bhd, 161 Jalan Maharajalela (Jalan Birch), Kuala Lumpur. Dengan perbuatan tuan itu, tuan telah melakukan satu kesalahan yang bertentangan dengan perintah am 4(2)(a), 4(2)(d), 4(2)(f) dan 4(2)(g) Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D) 1980.

The letter of 16 July 1986 was issued pursuant to general order 26(2) of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980.

General order 26, which has the force of law, deals with the procedure to be followed in cases where dismissal or reduction in rank may be involved. So far as material it reads:

(1) Where it is represented to, or is found by, the appropriate disciplinary authority that an officer is guilty of unsatisfactory work or misconduct and such work or misconduct, in the opinion of the disciplinary authority, merits dismissal or reduction in rank, the provisions of the following paragraphs shall apply.

(2) The appropriate disciplinary authority shall, after considering all the available information in its possession [if of the opinion] that there is a prima facie case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, prepared, if necessary, with the aid of the legal department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank and shall call upon him to state in writing within a period of not less than fourteen days from the date of receipt of the letter a representation containing grounds upon which he relies to exculpate himself.

(3) ...

(4) If the officer does not furnish any representation within the specified time, or if he furnishes a representation which fails to exculpate himself to the satisfaction of the appropriate disciplinary authority, it shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

The plaintiff received the letter on 5 August 1986 and he replied it by his letter dated 21 August 1986 in which he denied both the charges and stated that he did not make the alleged telephone calls to Madras, India nor did he direct any member of his staff to do so. But he failed to present a case of substance to the deciding body which could have exculpated him (general order 26(4)) or which would be enough for the disciplinary authority to call for further clarification and appoint a committee of inquiry in the case against him (general order 26(5)). Two telephone subscribers had complained to Telekoms that they have been billed for overseas calls made from their telephone numbers which they never made or were impossible for them to have made as they have no commercial or other connections with people abroad. But he made no attempt to show that at the time the calls were made he was not anywhere near the

A complainants' telephones or in close proximity to a facility where he could have access to or tampered with the telephone lines of the complainant subscribers. As a telephone technician, he could have given some sort of credible explanation, if he had one. That was the very least that was expected of him. Instead of directing his attention to show that he could not have done it, he merely denied that he made those telephone calls to B the telephone number MAD 9144 24688 in Madras, India. According to him, the Indian Telecoms had informed him that it was impossible for them to trace the name of the person who had made those calls from outside of India to a subscriber in India. Of course, they would not be able to do that — it does not take an Einstein to figure that out. He contended C that since the Indian Telecoms could not name the caller, therefore, he could not be the one. But that is to beg the question. The point was not whether the Indian Telecoms could identify the caller. It was for him to show (as he was asked to show cause) that he could not be the person responsible for the calls that were made through the use of the telephone numbers of the complainants. For this, there was no explanation at all D coming from him. General order 26(2) only shifts the onus on to him to exculpate himself by a representation in writing, which can be adequately met by showing that he was not the person responsible. This does not mean that he must show exactly how the tampering of the phone lines was done. It is sufficient if he satisfies the disciplinary authority (in his written E representations) that he did not do it. He also asked for permission to engage a solicitor. However, there was no response to this request. Instead, they found that the representations he made in writing failed to exculpate him to the satisfaction of the disciplinary authority, and he was dismissed on 24 November 1986. The action to dismiss him was taken under general order 26(4).

F General order 26(5) provides that after an accused officer has made his representations in writing and the disciplinary authority considers that the case against the officer requires further clarification, it may appoint a committee of inquiry. General order 26(6) provides that the officer has to be given notice of the day on which the question of his dismissal or G reduction in rank will come before the committee and be told that he will be allowed and, if the committee so determined, required to appear before it and exculpate himself. He has to be given the opportunity of being present when witnesses are examined and of putting questions to them (general order 26(7)). The committee may permit the government or the officer to be represented by an officer of the public service or, in exceptional H cases, by an advocate and solicitor (general order 26(8)). The committee has to report to the disciplinary authority which will act on its report (general order 26(11)).

Surprisingly, although the statement of claim was scanty and grossly inadequate, the action went to trial. There was no indication at all in the I statement of claim that the point would be taken that the plaintiff was denied legal representation. There was only a general allegation in para 7 of the statement of claim that the first defendant had acted in breach of natural justice in the dismissal of the plaintiff. But at the trial, the plaintiff contended that the decision to dismiss him was null and void and of no

effect on the ground that he had requested and been denied legal representation in relation to the charges against him. The judge below dismissed his action, and he appeals to this court.

I refer to *Najar Singh v Government of Malaysia & Anor* [1976] 1 MLJ 203 where Viscount Dilhorne who gave the judgment of the Board (consisting of Lord Wilberforce, Lord Morris of Borth-y-Gest, Viscount Dilhorne, Lord Hailsham of St Marylebone and Lord Fraser of Tullybelton) stated the facts thus, at p 203:

> ... the Inspector General of Police sent him a letter dated 5 July 1971 asking him to show cause why he should not be dismissed from the police force. The appellant sent a reply forthwith. Their Lordships are ignorant of the reasons why the Inspector General wrote to him and if the contents of his reply as they were not disclosed in the courts.
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> On 18 August 1971, the appellant was dismissed from the police force and just under a year later, on 16 August 1972, he started these proceedings in which he sought a declaration that his dismissal from the police force 'purported to be effected by the Police Services Commission' was void, and an order for payment to him of the pay, allowances and emoluments of a sergeant major from 18 August 1971.
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> Abdul Hamid J dismissed his claim. He then appealed to the Federal Court of Malaysia and he now appeals with leave of that court from their dismissal of his appeal.

The grounds on which he appeals may be summarized as follows:

(1) ...

(2) Contrary to natural justice and reg 27 of the Chapter D Regulations 1969, he was not afforded a reasonable opportunity of being heard before he was dismissed.

The Public Officers (Conduct and Discipline) (General Orders Chapter D) Regulations 1969 so far as material read as follows:

> 27 In all disciplinary proceedings under this Part no officer shall be dismissed or reduced in rank unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard.
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> ...
>
> 30 (1) Where it is represented to, or is found by, the appropriate Disciplinary Authority or the Director-General of Public Service that an officer is guilty of unsatisfactory work or misconduct and such work or misconduct, in the opinion of the Disciplinary Authority, merits dismissal or reduction in rank, the following provisions shall apply.
>
> (2) The Disciplinary Authority shall after considering all the available information in its possession [if of the opinion] that there is a prima facie case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, prepared, if necessary, with the aid of the Legal Department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank and shall call upon him to state in writing [within] a period of not less than fourteen days a representation containing grounds upon which he relies to exculpate himself.

A ...

(4) If the officer does not furnish any representation within the time fixed, or if he furnishes a representation which fails to exculpate himself to the satisfaction of the Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

B Viscount Dilhorne, in giving the judgment of the board, said at p 205:

... Regulation 27 has to be read with reg 30 and that makes no provision for an oral hearing if the officer fails to make representations in writing or the representation he makes in writing do not exculpate him. It is only if a committee of inquiry is appointed that he will be given the opportunity of C giving oral evidence.

In their Lordships' opinion, reg 27 is not to be interpreted as imposing an obligation to hear on officer orally.

In a number of cases the argument has been put forward that the omission to hear a party orally was contrary to natural justice. In *Local* D *Government Board v Arlidge* [1915] AC 120, evidence had been given on behalf of Mr Arlidge at a public inquiry but he claimed to be entitled to be heard orally by the Local Government Board to which he was appealing before they decided his appeal. The House decided that he was not so entitled, Viscount Haldane LC saying at p 134:

'I do not think the board was bound to hear the respondent [Arlidge] E orally, provided it gave him the opportunities he actually had.'

In *The King v Housing Appeal Tribunal* [1920] 3 KB 334, the appeal tribunal, having received the appellant's notice of appeal and the local authority's statement in reply, dismissed the appeal. It was held that under the rules of procedure applicable, the appeal tribunal might dispense with an oral hearing but that they were bound to give the appellant a hearing in F the sense of an opportunity of putting his case; Sankey J, as he then was, saying at p 346:

'Now a hearing in my view need not be an oral one, it may be on written representations.'

and he concluded:

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... What is important is that the officer concerned should have a full opportunity of stating his case before he is dismissed. The Chapter D Regulations 1969 has provided this and the appellant availed himself of the opportunity, though as the content of his representations was not disclosed, their Lordships are unable to say whether he presented a case of substance.

H In the circumstances the plea by the appellant that there was a denial of natural justice must in their Lordships' opinion be rejected.

Just as in the instant case, it was only the representations the appellant had made in writing failed to exculpate him that he was dismissed (general order 26(4)). General order 26(4) makes no provision for an oral hearing I if the officer fails to make representations in writing or the representations he makes in writing do not exculpate him. Equally, it makes no provision for him or his legal representative to appear before any person or body at that stage which is only for stating his case in a written representation (for which the appellant was given a full opportunity to do so (general order 26(2)) and indeed he had already availed himself of that opportunity),

and if this fails to exculpate him to the satisfaction of the appropriate disciplinary authority, that authority will proceed to consider and decide on the dismissal or reduction in rank of the officer.

There is at that stage (general order 26(2) stage), of course, no impediment for a lawyer to draw up the written representations for the officer or to advise him on how to put together the representations in writing. Indeed, the Supreme Court felt that the written representations in *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 MLJ 114 have been written with the benefit of the advice of a lawyer (at p 130).

It is only if a committee of inquiry is appointed because the disciplinary authority requires further clarification in the case against the officer (general order 26(5)), that he will have the opportunity of giving oral testimony to exculpate himself (general order 26(6)). It is only then that the committee has discretion to allow him to be represented by an officer of the public service or, in exceptional cases, by an advocate and solicitor (general order 26(8)).

The following remarks from the judgment of Lord Shaw of Dunfermline in *Local Government Board v Arlidge* [1915] AC 120 at p 138 (which spoke of the means to act justly and to reach just ends by just means in relation to natural justice in administrative law) are appropriate to the procedure in general order 26:

> ... If a statute prescribes the means it [ie the deciding body] must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be imitated; and lawyer-like methods may find especial favour from lawyers. But that the judiciary should presume to impose its own methods on administrative or executive officers is a unsurpation. And the assumption that the methods of natural justice are ex necessitate those of courts of justice is wholly unfounded. This is expressly applicable to steps of procedure ... .

In *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 MLJ 114, the Supreme Court (Jemuri Serjan CJ (Borneo), Edgar Joseph Jr and Mohamed Dzaiddin SCJJ) held, and I read from the headnote, at p 115:

> (2) The respondent had complied with the provisions of GO 23 and GO 26 of the Police (sic) [Public] Officers (Conduct and Discipline) General Orders (Cap D) 1980 ('the 1980 general orders'). Following the procedure set out in GO 26, the respondent had correctly sent the appellant a show cause letter following closely the provisions of paras 1, 2 and 4. The show cause letter set out the grounds on which it was proposed to dismiss the appellant and invited him to furnish the respondent with a written statement which was accordingly furnished in great detail. Only when the respondent was satisfied that the written representation did not exculpate the appellant did he decide to dismiss him. Under para 4 (sic)[5] of GO 26, only if the respondent considers that the case against the appellant requires further clarification is he obliged to appoint a committee of inquiry. In such an event, both

A parties may be legally represented. Under the circumstances, the procedure adopted by the respondent did not in any way involve prejudice to the appellant.

This is what the Chief Justice (Borneo), in giving the judgment of the court, said at p 130:

B There was here no question of the respondent failing to comply with the provisions of GO 23 and GO 26. Besides, the appellant did not complain that GO 26 was not complied with nor that the provision of this general order is void for some well-established principles of constitutional or administrative law. Following the procedure set out in GO 26 the respondent had correctly sent him a show cause letter dated 1 March 1990 following C closely the provisions of paras 1, 2, and 4. The show cause letter set out the grounds on which it was proposed to dismiss the appellant and invited him to furnish the respondent with a written statement which also was accordingly furnished in great detail, apparently, after having had the benefit of the advice of a lawyer. Only when the respondent was satisfied that the written representation did not exculpate the appellant did he decide to dismiss him. D Under para 4 (*sic*) [5] of the said general order, only if the respondent considers that the case against the appellant requires further clarification that he is obliged to appoint a committee of inquiry. In such an event, both parties may be legally represented. Under the circumstances, the procedure adopted by the respondent, in our view, did not in any way involve prejudice to the appellant.

E See also *Hjh Halimatussaadiah bte Hj Kamaruddin v Public Services Commission, Malaysia & Anor* [1994] 3 MLJ 61 where the Supreme Court held, and I read from the headnote, at p 62:

(1) The procedure adopted by the disciplinary board and the PSC had complied strictly with orders 24 and 26 of GO 'D'. The disciplinary F board had decided that proceedings for dismissal should be taken against the appellant and referred the matter to the PSC, which then wrote a show cause letter to her. The appellant was given every opportunity to exculpate herself and, after due consideration of her representations, the PSC decided to dismiss her. Therefore, the appellant failed on the first ground.

G This is what Mohamed Dzaiddin SCJ in giving his judgment of the court (Abdul Hamid Omar LP, Edgar Joseph Jr and Mohamed Dzaiddin SCJJ) said, at p 69:

The procedure adopted by the chairman of the disciplinary board and the H PSC, in our view, followed strictly orders 24 and 26 of GO 'D'. The appellant was given every opportunity to exculpate herself. It is clear from the evidence that the chairman of the disciplinary board, upon receipt of the report from the State Legal Adviser, Perak, of the appellant's refusal to comply with the said service circular, decided under order 24 of GO 'D' that proceedings for dismissal should be taken against her. The chairman I then referred the matter to the PSC for further action. The PSC accordingly wrote to the appellant a show cause letter which included a charge as to why she should not be dismissed from public service. The appellant then gave a reply in the form of an exculpatory representation, giving her reasons why she would continue to wear the purdah. Order 26(4) states that if the officer

furnishes a representation which fails to exculpate himself to the satisfaction of the appropriate disciplinary authority, it shall then proceed to consider and decide on the dismissal or reduction in rank of the officer. After due consideration, the PSC decided on 10 November 1986 to dismiss her from service. The letter of dismissal was sent to her on 16 December 1986. In the result, the appellant's first ground must fail.

In other words, the opportunity to make written representations has been held sufficient to meet the demands of fairness. The opportunity to make representations in writing in a case such as the present has been held to be all that fairness requires (*Najar Singh v Government of Malaysia, Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* and *Hjh Halimatussaadiah bte Hj Kamaruddin v Public Services Commission, Malaysia & Anor*).

The Privy Council as well as the Supreme Court have held that in employing the procedure prescribed in general order 26 and the former reg 30 of the general orders, the requirements of fairness have been satisfied by an opportunity to make written representations to the deciding body. In all such cases, it has been held time and again by the highest courts in the land that written representations will suffice and that a fair hearing does not mean that there must be an opportunity to be heard orally by the officer in person or by his lawyer at the disciplinary authority stage. It is only at the committee of inquiry stage that an oral hearing, and with it the desirability or otherwise of legal representation, can be considered. The appeal is dismissed with costs.

The appellant has placed much reliance on the High Court case of *Doresamy v Public Services Commission* [1971] 2 MLJ 127 as an authority to be considered by this court in the present case. We think this is misplaced. *Doresamy* is as different as chalk from cheese from the facts and situation of the present case. The opening remarks in that case by Raja Azlan Shah J speak for themselves. He said at p 128:

> The applicant was given an opportunity to exculpate himself. His solicitors made representations on his behalf and the board, after due consideration, dismissed the applicant from his service. He was informed of his right of appeal against such decision to the Public Services Disciplinary (Division IV and Industrial and Manual Group) (Dismissal) Appeal Board. The applicant appealed to the Appeal Board in writing through his solicitors. The Chairman of the Disciplinary Board who was responsible for the preparation of the appeal record and forwarding the same to the Appeal Board noticed that the appeal was made by the applicant's solicitors. So he wrote a letter to the applicant in the following terms:
>
> > 'I have the honour to ... inform you that your appeal against your dismissal from the service cannot be considered by the Public Services Commission as the appeal was made through your solicitor and not by you personally in writing as provided by reg 13(1) of the Public Services Disciplinary Board Regulations 1967. In view of the above, your dismissal from the service has now become absolute ... .'

As can be seen from the above, *Doresamy* was not a case which was at the making of representations in writing (ie disciplinary authority) stage but it

was a case which was at the appeal stage where the procedure was quite different. All of these things have already been discussed and explained in this judgment, except that in the present case, there was no appellate stage but instead there is (if appointed by the disciplinary authority) a committee of inquiry stage (general order 26(5)). That stage, however, could only be reached if the disciplinary authority considers that the case against the accused officer requires further clarification. There, there are provisions for an oral hearing (general order 26(6)) and for the officer to be present and represented by a fellow officer or (in exceptional cases) by a lawyer (general order 26(8)). But in the present case, the proceedings stopped at the stage where general order 26(4) is applicable and that makes no provision for an oral hearing or for the officer or his agent or lawyer to appear before the deciding body if he fails to make representations in writing or the representations he makes in writing do not exculpate him. Here, in the present case, the matter ended for the appellant by his dismissal. It did not proceed further to the committee of inquiry level because the disciplinary authority did not require further clarification in the case against the appellant. It is only if a committee of inquiry is appointed that he will have the opportunity of giving oral evidence to exculpate himself (general order 26(6)) and the committee will have the discretion to permit him to be represented by an officer of the public service or, in exceptional cases, by a lawyer (general order 26(8)).

Appeal dismissed.

Reported by David Lai